

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: WAYNE J. MYER ET AL.  
For: APPARATUS FOR MAKING A CORRUGATION-FREE FOAM  
Serial No.: 10/063,185 Examiner: Emmanuel S. Luk  
Filed: March 28, 2002 Group Art Unit: 1722  
Atty. Docket: 70254-0346 Confirmation No.: 4762

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being:

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\_\_\_\_\_/Marisa L. Matthews/

Signature

Date: January 16, 2007

\_\_\_\_\_/Marisa L. Matthews

(type or print name of person certifying)

Commissioner for Patents  
Office of Patent Legal Administration  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**

**UNDER 35 U.S.C. § 154 AND 37 C.F.R. § 1.705(D)**

In accordance with 37 C.F.R. § 1.705(d), Applicants hereby request a reconsideration of a determination of patent term adjustment under 35 U.S.C. § 154(b). This request for reconsideration is timely filed because it is filed within 60 days of the issuance of the patent.

The Commissioner is authorized to charge our deposit account 50-2003 the sum of \$200 for this request in accordance with 37 C.F.R. § 1.18(e). However, because Applicants believe that this request is necessitated because of an error on behalf of the U.S. Patent and Trademark Office in making the adjustment to the patent term, Applicants should be refunded this fee if this request is granted.

### STATEMENT OF FACTS INVOLVED

The correct patent term adjustment for this patent should be 910 days. The Issue Notification determined that the patent term adjustment is 607 days.

This application was filed on March 28, 2002, as a continuation of U.S. Serial No. 09/418,165, filed October 13, 1999, which issued as U.S. Patent No. 6,428,297 on August 6, 2002. The U.S. Patent and Trademark Office held that the above-identified application complied with all 35 U.S.C. requirements as of March 28, 2002.

A first Office Action in this application was not mailed until March 28, 2004, 303 days after 14 months following the filing date of this application.

Applicants filed a timely Response to this Office Action on June 4, 2004.

On July 12, 2004, a Final Office Action was mailed.

Applicants filed a timely Response to this Office Action on September 13, 2004.

On October 14, 2004, a Second Non Final Office Action was mailed.

Applicants filed a timely Response to this Office Action on January 14, 2005.

On April 14, 2005, a Third Non Final Office Action was mailed.

Applicants filed a timely Response to this Office Action on July 13, 2005.

On August 26, 2005, a Fourth Non Final Office Action was mailed.

Applicants' response to the Office Action was due on November 26, 2005, which was a Saturday. Applicants filed a timely response to the Office Action on November 28, 2005. Applicants incurred a 2 day reduction in Patent Term Adjustment for the timely filed response being received after the 3 month response deadline.

Applicants filed a Supplemental Response to the Office Action on November 28, 2005. Applicants incurred a 1 day reduction in Patent Term Adjustment for filing the supplemental response.

A Notice of Allowance, a Determination of Patent Term Adjustment, and a Notice of Allowability were not mailed to Applicants until May 8, 2006, 41 days after 4 months following the filing date of the last Response to Office Action. In the Determination of Patent Term

Adjustment, the Patent and Trademark Office determined that the patent term adjustment is 341 days. Applicants agree with the Patent and Trademark Office's determination of the patent term adjustment to this point.

Applicants timely paid the issue fee on August 2, 2006.

Applicants filed no further papers in the U.S. Patent and Trademark Office subsequent to the timely payment of the final issue fee. Applicants received an Issue Notification that the patent would issue on November 28, 2006, which is 610 days after 36 months following the filing date of this application. According to the Issue Notification, the patent term adjustment is a total of 607 days.

Upon review of the Patent Term Adjustment History in PAIR, Applicants' Attorney noted that the PTA 36 Months entry was calculated to only 266 days, instead of 610 days. Applicants believe this calculation to be in error. It appears that the U.S. Patent and Trademark Office took the 610 day adjustment and subtracted from it the 303 days which accrued based on the first Office Action issuance date and the 41 days which accrued based on the Notice of Allowance issuance date, which results in 266 days.

Applicants believe that they are entitled the 303 days which accrued based on the first Office Action issuance date. This 303 day time period does not overlap with any other patent term adjustments. That is, the 303 day time period was within the 3-year time period, not after. Therefore, there was no overlap in the time periods. Applicants do agree that the 41 days which accrued based on the Notice of Allowance issuance date overlap with the 610 days which accrued based on the three year date, and that Applicants are therefore not entitled to those 41 days of patent term adjustment.

Applicants believe they are entitled to the following patent term adjustment:

Patent Prosecution Event	Date Done	Date Due	Days of PTO Delay	Days of Applicants' Delay
Application filed	03/28/02			
First Office Action	03/26/04	05/28/03	303	
Response to First Office Action	06/04/04	06/26/04		0
Second Office Action - Final Rejection	07/12/04	08/04/05	0	
Response to Second Office Action	09/13/04	10/12/04		0
Third Office Action	10/14/04	11/13/05	0	
Response to Third Office Action	01/14/05	01/14/05		0
Fourth Non-final Office Action	04/15/05	05/14/05	0	
Response to Second Non-final Office Action	07/13/05	07/15/05		0
Fifth Non-final Office Action	08/26/05	11/13/05	0	
Response to Fifth Non-final Office Action	11/28/05	11/26/05		2
Supplemental Response to Fifth Non-final Office Action	11/29/05			1
Notice of Allowance Mailed	05/08/06	03/28/06	41	
Issue Fee Payment	08/02/06	08/08/06		0
Patent Issue Date	11/28/06	12/02/06	0	
Three Year Date		03/28/05	610	
Notice of Abandonment				
Petition to withdraw or revive				
Adjustment for overlapping intervals			41	
<b>Delays</b>			913 PTO	3 Applicant

	<b>Net Extension</b>	<b>910</b>	<b>Days</b>
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In view of the foregoing, Applicants believe that they are entitled 910 days of patent term adjustment. A correction of the patent term adjustment to 910 days is respectfully requested. Refund of the fee is also requested for this Request.

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Examiner: Emmanuel S. Luk  
Group Art Unit: 1722

Respectfully submitted,

WAYNE J. MYER ET AL.

Dated: January 16, 2007

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